

United States District Court
Eastern District of Michigan
Southern Division

**The PUBLIC INTEREST LEGAL
FOUNDATION**

Plaintiff,

v.

**JANICE M. WINFREY, in her official
capacity as Detroit City Clerk, and
GEORGE AZZOUZ, in his official
capacity as Director of Elections for the
City of Detroit,**

No. 2:19-13638
Hon. David M. Lawson
Mag. Judge Michael J. Hluchaniuk

Defendants.

**PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL
PURSUANT TO FED. R. CIV. P. 41(A)(2).**

Plaintiff Public Interest Legal Foundation respectfully requests that this action be dismissed pursuant to Fed. R. Civ. P. 41(a)(2).

Counsel for the Plaintiff sought concurrence for this Motion. Counsel for Defendants stated that Defendants concur. Counsel for Intervenor-Defendants stated that they consent to the voluntary dismissal but that they reserve their rights with respect to whether the dismissal should be with or without prejudice.

For the reasons contained herein, Plaintiff's motion should be granted.

Respectfully submitted,

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Dated: June 29, 2020

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**JANICE M. WINFREY, in her official
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No. 2:19-13638
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Defendants.

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR VOLUNTARY
DISMISSAL PURSUANT TO FED. R. CIV. P. 41(A)(2).**

STATEMENT OF ISSUE PRESENTED

- 1) Whether Plaintiff's request to voluntarily dismiss this action pursuant to Fed. R. Civ. P. 41(a)(2) should be granted.

Plaintiff's Response: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Fed. R. Civ. P. 41(a)(2).

Plaintiff has filed this motion for voluntary dismissal. The basis of Plaintiff's motion is that Defendants' overdue discovery responses now enable the Plaintiff to ascertain that remedial actions were taken after the filing of this lawsuit. Defendants have taken action on the list of likely deceased registrants provided by the Plaintiff. Further, almost all of the duplicate registrations that Plaintiff brought to Defendants' attention have been corrected.

Plaintiff's request is pursuant to Fed. R. Civ. P. 41(a)(2) because the Defendants have filed an answer. There are no counterclaims or crossclaims pending. Defendant could not conceivably suffer any prejudice if this action is dismissed. *See Rogers v. Mich. AG*, No. 16-12509, 2016 U.S. Dist. LEXIS 176766, at *4 (E.D. Mich. Dec. 1, 2016) ("Moreover, it is generally held that a district court will grant a motion for voluntary dismissal unless a defendant can show that it will suffer some 'plain legal prejudice as a result.' *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987).") Indeed, dismissal is precisely the action the Defendants have sought. Similarly, Plaintiff has obtained what it has sought—a fix for the list maintenance problems of deceased and duplicate registrants. No party would be prejudiced by granting this motion.

Defendants' overdue discovery responses now enable the Plaintiff to ascertain that remedial actions were commenced after the filing of this lawsuit. On February 10, 2020, Plaintiff served requests for production of documents asking

for, among other documents, the current voter roll. (PageID.638.) The purpose of this request was to catalog any remedial actions taken after the filing of this suit and also address various defenses raised by the parties. The voter roll is the document that conclusively reveals the current state of the rolls and any actions taken by Defendants. Without it, Plaintiff could not assess the merits of those arguments or the current state of the rolls. Responses to Plaintiff's February 10, 2020 requests were due by April 28, 2020 per this Court's Order on March 31, 2020. (PageID.703.)

Defendants did not provide the voter roll that would allow Plaintiff to discern conclusive remedial actions taken in regard to the data provided to Defendants about defects in list maintenance procedures regarding dead and duplicate registrants until *June 25, 2020*.

From June 25, 2020 to the filing of this motion, Plaintiff has been examining this data. The responsive document provided June 25, 2020 demonstrates to the satisfaction of the Plaintiff that the Defendants undertook an effort after the commencement of this matter to cure defects found by the Plaintiff.¹

¹ For example, Plaintiff learned that Milton J----- Jr., was registered to vote before the filing of this lawsuit. Plaintiff determined that this registrant in fact died on March 22, 1998. After the commencement of this action, Defendants removed this registrant as deceased on January 21, 2020. The voter rolls reveal extensive evidence of remedial action related to the data provided by the Plaintiff to the Defendants.

In light of the actions taken, Plaintiff respectfully requests that this Court, pursuant to Fed. R. Civ. P. 41(a)(2), dismiss its Complaint without prejudice as to all claims made and all parties named therein.

Dated: June 29, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2020, I filed the foregoing electronically with the U.S. District Court for the Eastern District of Michigan in this matter, which will forward this document to all counsel of record through its e-filing system.

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